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There could be very little direct authority on the question. In previous treaties—with France, 1803, Art. III.; with Spain, 1820, 8 Stat. 252; with Mexico, 1848, 9 Stat. 922; with Russia, 1867, 15 Stat. 539, — it was agreed that the inhabitants of the acquired territories should eventually be admitted to citizenship. *In re Gonzalez*, 118 Fed. R. 941. The treaty with Spain, ceding Porto Rico, contains no such guaranty. The government contended that the test to be applied was citizenship; that while Porto Ricans in the international sense were “nationals” of the United States, they were not citizens thereof; that although nationals so far as “respects general allegiance and protection [they] have not lost their previous alien character by birth and race, and on every other test, so as to be entitled to unrestricted ingress into this country,” *Suppl. Brief, Solic. Gen.*, p. 31; that the only differentiation from total alienage was the element of protection which the federal government assumed. This seems to have been the theory applied in the lower court in the same litigation. *In re Gonzalez* (C. C. 1902), 118 Fed. Rep. 941. Judge LACOMBE there stated:—

“The fourteenth amendment to the Constitution provides that all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States. It is not disputed that petitioner was by birth an alien. Unless in some appropriate way she has since been naturalized, she is still an alien. There is no suggestion that she was naturalized under the general laws prescribed by Congress regulating the admission of aliens to citizenship. . . . Being foreign born and not naturalized, she remains an alien, and subject to the provisions of law regulating the admission of aliens who come to the United States.”

The Supreme Court, however, held that the test was alienage.

In view of the guarded statements, the almost total absence of discussion, and the fact that the question was *narrowed* to the interpretation of the word alien within the meaning of a particular act, it is difficult even to surmise the effect of this decision.

MIMICRY AS INFRINGEMENT OF MUSICAL COMPOSITION.—What constitutes a wrongful public performance of a copyrighted dramatic or musical composition is a question not always easy to determine. For instance it is sometimes necessary to decide whether a performance is public or private. It may be public whether called so or not, or whether all persons be admitted indiscriminately or only a certain class, or whether a price of admission is charged or not. *DRONE ON COPYRIGHT*, 627. So the absence of scenery or costumes will not prevent a public performance from being an infringement. *Russell v. Smith*, 12 Q. B. 217, 64 E. C. L. 217. On the other hand, mere similarity in the general plan of the performance has been deemed to be no infringement. *Barnes v. Miner* (1903), 122 Fed. 480.

A novel case on this question is *Bloom & Hamlin v. Nixon* (1903), 125 Fed. Rep. 977. An injunction was asked to restrain Miss Templeton from imitating the manner, gestures and actions of a Miss Faust. It was held that mimicry would not be enjoined. The court said: “The question remains is the song in fact being performed or represented? In my opinion the question should be answered in the negative. What is being represented are the

peculiar actions, gestures, and tones of Miss Faust, and these were not copyrighted by the complainant Bloom and could not be, since they were the subsequent device of other minds. It is the personality imitated that is the subject of Miss Templeton's act, modified, of course by her own individuality and . . . the chorus of the song is a mere vehicle for carrying the imitation along . . . No doubt, the good faith of such mimicry is an essential element . . . Fay Templeton does not sing it, she merely imitates the singer; and the interest in her performance is due, not to the song, but to the degree of excellence of the imitation. This is a distinct and different variety of the histrionic art from the singing of songs, dramatic or otherwise."